

Message Text

PAGE 01 STATE 165064

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TO ALL DIPLOMATIC POSTS

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XMT AMEMBASSY CARACAS

UNCLAS STATE 165064

FOLLOWING RPT CARACAS 6983 ACTION STATE INFO USIA WASHDC

USUN NEW YORK JULY 25, 1974

QUOTE UNCLAS CARACAS 6983

USIA FOR IPS AND IBS

FROM US DEL LOS

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TAGS: PLOS

UNCLASSIFIED

PAGE 02 STATE 165064

SUBJECT: LOS: U.S. STATEMENT OF STRAITS IN COMMITTEE II, JULY 22.

FOLLOWING IS TEXT OF STATEMENT GIVEN BY JOHN NORTON MOORE, DEPUTY
SPECIAL REPRESENTATIVE OF THE PRESIDENT AND UNITED STATES REPRESENTATIVE
TO THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE

SEA, JULY 22, 1974

MR. CHAIRMAN.

1. IN ACCORDANCE WITH YOUR GUIDELINES FOR OUR WORK, MY DELEGATION WOULD LIKE TO TAKE THIS OPPORTUNITY TO COMMENT ON PROPOSALS MADE BY SEVERAL STATES ON THE ISSUE OF STRAITS AND, IN THIS CONNECTION, TO DEVOTE PARTICULAR ATTENTION TO THE CONCERNS OF STATES BORDERING STRAITS WITH RESPECT TO SECURITY, SAFETY OF NAVIGATION AND PREVENTION OF POLLUTION.

2. THE UNITED STATES DELEGATION HAS STATED ON NUMEROUS OCCESIONS THE CENTRAL IMPORTANCE THAT WE ATTACH TO A SATISFACTORY TREATY REGIME OF UNIMPEDED TRANSIT THROUGH AND OVER STRAITS USED FOR INTERNATIONAL NAVIGATION. INDEED, FOR STATES BORDERING AS WELL AS STATES WHOSE SHIPS AND AIRCRAFT TRANSIT SUCH STRAITS, THERE COULD NOT BE A SUCCESSFUL LAW OF THE SEA CONFERENCE UNLESS THIS QUESTION IS SATISFACTORILY RESOLVED. THE INADEQUACIES OF THE TRADITIONAL DOCTRINE OF INNOCENT PASSAGE-- A CONCEPT DEVELOPED NOT FOR TRANSIT THROUGH STRAITS BUT FOR PASSAGE THROUGH A NARROW BELT OF TERRITORIAL SEA-- ARE WELL KNOWN.

3. WE ARE APPRECIATIVE OF THE STRONG TREND IN THE DEBATES AS WELL AS SEVERAL PROPOSALS RECENTLY INTRODUCED IN THIS COMMITTEE WHICH REFLECT AN UNDERSTANING OF THE IMPORTANCE OF NAVIGATION AND OVER-FLIGHT THROUGH STRAITS FOR THE GLOBAL FLOW OF TRADE AND COMMUNICATIONS AND FOR A STABLE AND PEACEFUL WORLD ORDER. THESE PROPOSALS ALSO REFLECT THAT THERE NEED BE NO CONFLICT BETWEEN THE INTERESTS OF STATES TRANSITING AND STATES BORDERING STRAITS. WHILE UNIMPEDED TRANSIT OF STRAITS USED FOR INTERNATIONAL NAVIGATION IS VITAL TO ACHIEVING A SUCCESSFUL TREATY, WE CAN AND MUST ALSO PROTECT THE INTERESTS OF STATES BORDERING STRAITS.

4. THE PROPOSALS MADE REFLECT THE FACT THAT THREE CATEGORIES OF CONCERN HAVE BEEN MOST FREQUENTLY EXPRESSED BY STATES BORDERING STRAITS. THEY ARE SECURITY, SAFETY OF NAVIGATION, AND PREVENTION
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PAGE 03 STATE 165064

OF POLLUTION.

5. WITH RESPECT TO THE FIRST OF THESE CONCERNS, THE SECURITY OF STATES BORDERING STRAITS, WE SHOULD REMEMBER THAT UNIMPEDED TRANSIT IS A RIGHT OF TRANSIT, NOT A RIGHT TO ENGAGE IN ACTIVITIES INIMICAL TO THE SECURITY OF THESE STATES. IT IS SOLELY A RIGHT OF THE TRANSITING SHIP OR AIRCRAFT TO TRANSIT THE STRAIT. THAT IS, TO ENTER THE STRAIT, PASS THROUGH OR OVER IN THE NORMAL MODE USING CUSTOMARY NAVIGATIONAL ROUTES AND APPLICABLE TRAFFIC SEPARATION SCHEMES, AND THEN TO EXIT THE STRAIT. IN THIS REGARD, IT SHOULD BE BORNE IN MIND THAT THE RIGHT OF UNIMPEDED TRANSIT IS A SUBSTANTIAL RESTRICTION ON PRESENT HIGH SEAS FREEDOMS. TO MAKE THIS CLEAR, WE AGREE THAT THE CHAPTER ON PASSAGE OF STRAITS USED FOR INTERNATIONAL NAVIGATION MIGHT SPECIFY THAT THE RIGHT

OF UNIMPEDED TRANSIT IS SOLELY FOR THE PURPOSE OF CONTINUOUS AND EXPEDITIOUS TRANSIT OF THE STRAIT.

6. TO ENSURE THAT UNIMPEDED TRANSIT WILL BE CONSISTENT WITH THE SECURITY INTERESTS OF STATES BORDERING STRAITS, THE TREATY SHOULD REQUIRE THAT SHIPS AND AIRCRAFT IN TRANSIT REFRAIN FROM ANY THREAT OR USE OF FORCE IN VIOLATION OF THE CHARTER OF THE UNITED NATIONS AGAINST THE TERRITORIAL INTEGRITY OF POLITICAL INDEPENDENCE OF A STATE BORDERING THE STRAIT. SITUATIONS OF ACTUAL HOSTILITIES ARE, OF COURSE, LIKE ALL CONFLICT SETTINGS, GOVERNED BY THE OVERRIDING NORMS OF THE UNITED NATIONS CHARTER.

7. IT SHOULD ALSO BE NOTED WITH RESPECT TO SECURITY CONCERNS THAT STRAITS ARE CONFINED WATERS, AND PRUDENT SEAMEN WILL WANT TO PASS THROUGH THEM AS QUICKLY AS CIRCUMSTANCES PERMIT. AS A PRACTICAL MATTER, A STRAIT IS A MOST UNLIKELY PLACE FOR ANY THREATS TO SECURITY AGAINST A STATE BORDERING THE STRAIT.

8. THE SECOND CATEGORY OF CONCERN A BALANCE WHICH WILL FULLY PROTECT THE INTERESTS OF STATES WHOSE SHIPS AND AIRCRAFT TRANSIT A STRAIT AND THE INTERESTS OF STATES BORDERING THE STRAIT.

9. THE FIRST NEED IS TO ENSURE THAT TRANSITING VESSELS AND AIRCRAFT COMPLY WITH APPLICABLE INTERNATIONAL SAFETY REGULATIONS. THE PROPOSAL CONTAINED IN ARTICLES RECENTLY INTRODUCED BY THE UNITED KINGDOM MEETS THIS NEED. IT PROVIDES THAT QUOTE SHIPS IN TRANSIT UNCLASSIFIED

PAGE 04 STATE 165064

SHALL COMPLY WITH GENERALLY ACCEPTED INTERNATIONAL REGULATIONS, PROCEDURES AND PRACTICES FOR THE SAFETY OF NAVIGATION AT SEA, INCLUDING THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA. UNQUOTE. WE SUPPORT THIS PROPOSAL.

10. WITH RESPECT TO AIRCRAFT, WE BELIEVE THAT CIVIL AIRCRAFT IN TRANSIT SHOULD COMPLY WITH THE HIGH SEAS STANDARDS, RECOMMENDED PRACTICES AND PROCEDURES ESTABLISHED BY ICAO UNDER THE CHICAGO CONVENTION. STATE AIRCRAFT, WHICH ARE NOT GOVERNED BY THESE RULES, SHOULD NORMALLY RESPECT THEM AND SHOULD AT ALL TIMES OPERATE WITH DUE REGARD FOR THE SAFETY OF NAVIGATION.

11. BECAUSE OF THE IMPORTANCE OF TRAFFIC SEPARATION SCHEMES FOR SAFETY OF NAVIGATION IN CROWDED STRAITS IT WOULD SEEM USEFUL TO ENCOURAGE STATES BORDERING STRAITS TO PROPOSE TRAFFIC SEPARATION SCHEMES WHERE NECESSARY TO PROMOTE THE SAFE PASSAGE OF SHIPS. SUCH SCHEMES COULD THEN GO INTO EFFECT AFTER APPROVAL BY THE COMPETENT INTERNATIONAL ORGANIZATION.

12. THE THIRD CATEGORY OF CONCERN IS PREVENTION OF POLLUTION. ALL STATES RECOGNIZE THE IMPORTANCE OF FULLY PROTECTING THE MARINE ENVIRONMENT. IN THIS CONNECTION, THE PROPOSAL MADE BY THE UNITED KINGDOM TO REQUIRE THAT SHIPS IN TRANSIT COMPLY WITH GENERALLY ACCEPTED INTERNATIONAL REGULATIONS, PROCEDURES AND

PRACTICES FOR THE PREVENTION AND CONTROL OF POLLUTION FROM SHIPS IS AN IMPORTANT ONE. IT SHOULD ALSO BE NOTED THAT THE NEW INTERNATIONAL DISCHARGE STANDARDS FOR AREAS CLOSE TO THE COAST ARE VERY STRICT.

13. THE UNITED STATES IS OF THE VIEW THAT SUBJECT TO APPROPRIATE SAFEGUARDS AND THE USUAL EXEMPTION FOR SHIPS AND AIRCRAFT ENTITLED TO SOVEREIGN IMMUNITY, STATES BORDERING STRAITS SHOULD BE ABLE TO ENFORCE AGAINST VIOLATIONS OCCURRING WITHIN THE STRAIT FOR DEVIATION FROM INTERNATIONALLY APPROVED TRAFFIC SEPARATION SCHEMES. SUCH DEVIATIONS MAY SERIOUSLY THREATEN THE MARINE ENVIRONMENT WITHIN STRAITS.

14. WITH RESPECT TO BOTH SAFETY AND POLLUTION CONCERNS IN STRAITS, IT IS ALSO IMPORTANT TO MAKE ADEQUATE PROVISIONS FOR COMPENSATION SHOULD DAMAGE RESULT DESPITE THE MOST RIGOROUS PREVENTION REQUIREMENTS. THE RECENT LIABILITY AND FUND CONVENTIONS FOR COMPENSATION UNCLASSIFIED

PAGE 05 STATE 165064

FOR DAMAGE CAUSED BY POLLUTION FROM OIL ARE A GREAT STEP FORWARD IN THIS REGARD. AND THE PROVISIONS CONCERNING LIABILITY IN THE UNITED KINGDOM ARTICLES AND IN L.11 JOINTLY PREPARED BY A NUMBER OF EASTERN EUROPEAN STATES ALSO SEEM WORTHY OF STUDY.

15. SIMILARLY, WITH RESPECT TO BOTH SAFETY AND POLLUTION CONCERNS IN STRAITS, SOME STRAITS, BECAUSE OF DEPTH OR OTHER NAVIGATIONAL OR ENVIRONMENTAL LIMITATIONS, WILL REQUIRE SPECIAL STANDARDS IN ADDITION TO THOSE UNIVERSALLY ADOPTED. TO MEET THIS NEED, WE WOULD WELCOME STATES BORDERING A STRAIT RECOMMENDING TO THE APPROPRIATE INTERNATIONAL ORGANIZATION FOR APPROVAL ANY SPECIAL SAFETY OR POLLUTION STANDARDS WHICH THEY FEEL ARE REQUIRED. IN THIS WAY, STATES BORDERING THE STRAIT HAVE THE PREDOMINANT ROLE IN FORMULATING SUCH SPECIAL STANDARDS BUT AT THE SAME TIME THE INTERNATIONAL COMMUNITY INTEREST IS ALSO FULLY PROTECTED.

16. MR CHAIRMAN, MY DELEGATION IS ALSO PLEASED THAT MOST OF THE RECENTLY INTRODUCED PROPOSALS CONCERNING TRANSIT OF STRAITS INCLUDE THE ESSENTIAL ELEMENT OF TRANSIT BY AIRCRAFT AS WELL AS SHIPS. THERE HAVE, HOWEVER, BEEN SUGGESTIONS THAT QUESTIONS OF OVERFLIGHT OF AIRCRAFT ARE NOT MATTERS OF OCEANS LAW AND NEED NOT BE DEALT WITH IN THE LAW OF THE SEA CONFERENCE. IT SHOULD BE RECALLED THAT THE QUESTION OF OVERFLIGHT WAS INSEPARABLY LINKED WITH THE LAW OF THE SEA IN THE 1958 CONVENTIONS ON THE HIGH SEAS AND ON THE TERRITORIAL SEA AND CONTIGUOUS ZONE.

17. MOREOVER, SINCE THE BREADTH OF THE TERRITORIAL SEA WILL BE DECIDED BY THE CONFERENCE, THE QUESTION OF OVERFLIGHT CANNOT BE AVOIDED UNLESS THOSE STATES MAKING THIS SUGGESTION ARE WILLING TO FOREGO SOVEREIGNTY OVER THE AIRSPACE ABOVE THE TERRITORIAL SEA. THE SUBJECT IS CLEARLY BEFORE THE LAW OF THE SEA CONFERENCE AS THE LIST OF SUBJECT AND ISSUES APPROVED BY THE SEABED COMMITTEE SPECIFICALLY REFERS IN ITEMS 2.5 AND 6.3 TO THE FREEDOM OF

OVERFLIGHT.

18. ALL AIRCRAFT, CIVIL AS WELL AS STATE, NOW HAVE A RIGHT OF OVERFLIGHT WITHIN HIGH SEAS AREAS, INCLUDING HIGH SEAS WITHIN STRAITS USED FOR INTERNATIONAL NAVIGATION. THE CHICAGO CONVENTION REFLECTS THIS RIGHT BY DIFFERENTIATING BETWEEN FLIGHTS OVER TERRITORY WHICH ARE SUBJECT TO THE CONSENT OF THE STATE IN QUESTION AND FLIGHTS OVER THE HIGH SEAS WHICH ARE NOT. AN UNCLASSIFIED

PAGE 06 STATE 165064

EXTENSION OF THE TERRITORIAL SEA TO TWELVE MILES BY A NEW LAW OF THE SEA TREATY WOULD, UNLESS ACCOMPANIED BY ADEQUATE PROVISION FOR OVERFLIGHT OF STRAITS, ALTER THIS BASIC RIGHT OF OVERFLIGHT THROUGH A LARGE NUMBER OF STRAITS USED FOR INTERNATIONAL NAVIGATION WHICH WOULD BE OVERLAPPED BY A TWELVE-MILE TERRITORIAL SEA.

19. IT IS INSUFFICIENT IN THIS REGARD TO RELY ON THE CHICAGO CONVENTION FOR THE PROTECTION OF THIS VITAL OVERFLIGHT RIGHT OF STRAITS OVERLAPPED BY A TERRITORIAL SEA. FOR ONE THING, NOT ALL STATES HAVE BECOME PARTIES TO THE CONVENTION. SECONDLY, WITH RESPECT TO OVERFLIGHT OF TERRITORIAL WATERS BY CIVIL AIRCRAFT THE CONVENTION PERMITS STATES IN CERTAIN CIRCUMSTANCES TO RESTRICT OR SUSPEND OVERFLIGHT. FINALLY, THE PROVISIONS OF THE CONVENTION DO NOT APPLY TO OVERFLIGHT BY STATE AIRCRAFT. THESE STATE AIRCRAFT INCLUDE A WIDE VARIETY OF AIRCRAFT IMPORTANT TO THE EFFECTIVE FUNCTIONING OF STATES, INCLUDING AIRCRAFT SPECIALIZED FOR WEATHER, DIPLOMATIC, CUSTOMS AND IMMIGRATION, SEARCH AND RESCUE, AND MILITARY USES.

20. MR CHAIRMAN, UNIMPEDED TRANSIT OF STRAITS USED FOR INTERNATIONAL NAVIGATION, AND THE INTERESTS OF STATES BORDERING STRAITS IN SECURITY, SAFETY OF NAVIGATION, AND PREVENTION OF POLLUTION ARE COMPLIMENTARY. ALL STATES SHARE AN INTEREST IN ENSURING EACH OF THESE GOALS. IT IS FORTUNATE, THEN, THAT AS PROPOSALS RECENTLY INTRODUCED BEFORE THIS COMMITTEE MAKE CLEAR, THE CONFERENCE NEED NOT MAKE A CHOICE BETWEEN THEM. RATHER, THE TASK IS TO PREPARE ARTICLES WHICH WILL FULLY PROTECT THE INTERESTS OF ALL STATES.

21. THANK YOU, MR. CHAIRMAN. END.
STEVENSON UNQUOTE KISSINGER

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